

AMENDED IN ASSEMBLY APRIL 19, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 583**

**Introduced by Assembly Member Jackson**

February 21, 2001

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An act to amend Sections 2100, 2102, 2104, ~~and 2105~~ 2105, and 2107 of the Family Code, relating to dissolution of marriage.

LEGISLATIVE COUNSEL'S DIGEST

AB 583, as amended, Jackson. Dissolution of marriage: community property.

Existing law requires a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest to be made in a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Existing law provides that each party has a continuing duty to update and augment that disclosure to the extent there have been any material changes, as specified.

This bill would modify the provision regarding each party's continuing duty to update and augment his or her disclosure by providing that each party shall do so ~~fairly~~ *immediately*, fully, and accurately, ~~and immediately~~ upon material change.

Existing law requires each party, from the date of separation to the date of the distribution of the community property, to provide the other party with an accurate and complete written disclosure of any investment opportunity that presents itself after the date of separation, but that results from any investment of either spouse from the date of

marriage to the date of separation, inclusive. Existing law requires that written disclosure be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment opportunity.

This bill would additionally require the disclosure to contain any business or other potential income-producing opportunity that presents itself after the date of separation, but that results from any investment, business activity, training or education of either spouse from the date of marriage to the date of separation, inclusive. The bill would require that the written disclosure be made in time for the other spouse to make an informed decision as to whether he or she desires to participate in the business or other potential income-producing opportunity, *and for the court to resolve any dispute regarding the right of the other spouse to participate in the opportunity. The bill would also provide that specified standards apply to all activities that affect the assets or liabilities of the other spouse, and the income or expenses of the party.*

Existing law requires, after or concurrently with service of the petition for dissolution or nullity of marriage or legal separation of the parties, each party to serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council.

*This bill would instead require service of that disclosure not later than 60 days after the service of the petition. The bill would additionally provide that the party, and his or her attorney, if any, shall be subject to monetary sanctions for fraud in the preliminary or final declaration of disclosure, or for any failure to disclose assets or liabilities or business, investment, or potential income-producing opportunities that amount to gross negligence require the preliminary declaration to characterize the ownership of each asset; would delete provisions authorizing a stipulation of a mutual waiver of the requirement governing a final declaration of disclosure; and would revise the sanctions for violation of the requirements governing a preliminary or final declaration of disclosure. By revising the elements of perjury, this bill would alter the definition of crime and thus impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*



Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2100 of the Family Code is amended to  
2 read:

3 2100. The Legislature finds and declares the following:

4 (a) It is the policy of the State of California (1) to marshal,  
5 preserve, and protect community and quasi-community assets and  
6 liabilities that exist at the date of separation so as to avoid  
7 dissipation of the community estate before distribution, (2) to  
8 ensure fair and sufficient child and spousal support awards, and (3)  
9 to achieve a division of community and quasi-community assets  
10 and liabilities on the dissolution or nullity of marriage or legal  
11 separation of the parties as provided under California law.

12 (b) Sound public policy further favors the reduction of the  
13 adversarial nature of marital dissolution and the attendant costs by  
14 fostering full disclosure and cooperative discovery.

15 (c) In order to promote this public policy, a full and accurate  
16 disclosure of all assets and liabilities in which one or both parties  
17 have or may have an interest must be made in the early stages of  
18 a proceeding for dissolution of marriage or legal separation of the  
19 parties, regardless of the characterization as community or  
20 separate, together with a disclosure of all income and expenses of  
21 the parties. Moreover, each party has a continuing duty to ~~fairly,~~  
22 ~~fully, accurately, and immediately~~ *immediately, fully, and*  
23 *accurately* update and augment that disclosure to the extent there  
24 have been any material changes so that at the time the parties enter  
25 into an agreement for the resolution of any of these issues, or at the  
26 time of trial on these issues, each party will have as full and  
27 complete knowledge of the relevant underlying facts.

28 SEC. 2. Section 2102 of the Family Code is amended to read:

29 2102. From the date of separation to the date of the  
30 distribution of the community or quasi-community asset or  
31 liability in question, each party is subject to the standards provided  
32 in Section 721, as to all activities that affect the ~~property and~~  
33 ~~support rights~~ *assets and liabilities* of the other party, including,  
34 but not limited to, the following activities:

1 (a) The accurate and complete disclosure of all assets and  
2 liabilities in which the party has or may have an interest or  
3 obligation and all current earnings, accumulations, and expenses,  
4 *including an immediate, full, and accurate update or*  
5 *augmentation to the extent there have been any material changes.*

6 (b) The accurate and complete written disclosure of any  
7 investment *opportunity*, business, or other potential  
8 income-producing opportunity that presents itself after the date of  
9 separation, but that results from any investment, business activity,  
10 training, or education of either spouse from the date of marriage  
11 to the date of separation, inclusive. The written disclosure shall be  
12 made in sufficient time for the other spouse to make an informed  
13 decision as to whether he or she desires to participate in the  
14 investment *opportunity*, business, or other potential  
15 income-producing opportunity, *and for the court to resolve any*  
16 *dispute regarding the right of the other spouse to participate in the*  
17 *opportunity.* In the event of nondisclosure of such an investment  
18 opportunity, the division of any gain resulting from that  
19 opportunity is governed by the standard provided in Section 2556.

20 (c) The operation or management of a business or an interest in  
21 a business in which the community may have an interest.

22 (d) *From the date that a valid, enforceable, and binding*  
23 *resolution of the disposition of the asset or liability in question is*  
24 *reached, until the asset or liability has actually been distributed,*  
25 *each party is subject to the standards provided in Section 721 as*  
26 *to all activities that affect the assets or liabilities of the other party.*

27 (e) *From the date of separation to the date of a valid,*  
28 *enforceable, and binding resolution of all issues relating child or*  
29 *spousal support and professional fees, each party is subject to the*  
30 *standards provided in Section 721 as to all issues relating to the*  
31 *support and fees, including immediate, full, and accurate*  
32 *disclosure of all material facts and information regarding the*  
33 *income or expenses of the party.*

34 SEC. 3. Section 2104 of the Family Code is amended to read:

35 2104. (a) ~~After or concurrently with~~ *Not later than 60 days*  
36 *after the service of the petition for dissolution or nullity of*  
37 *marriage or legal separation of the parties, each party shall serve*  
38 *on the other party a preliminary declaration of disclosure, executed*  
39 *under penalty of perjury on a form prescribed by the Judicial*  
40 *Council. The commission of perjury by a party on the preliminary*

1 declaration of disclosure may be grounds for setting aside the  
2 judgment, or any part or parts thereof, pursuant to Chapter 10  
3 (commencing with Section 2120), in addition to any and all other  
4 remedies, civil or criminal, that otherwise are available under law  
5 for the commission of perjury. ~~The party and his or her attorney,~~  
6 ~~if any, shall be subject to monetary sanctions for any fraud in the~~  
7 ~~preliminary declaration of disclosure, or any failure to disclose~~  
8 ~~assets or liabilities or business, investment, or potential~~  
9 ~~income producing opportunities, that amounts to gross~~  
10 ~~negligence.~~

11 (b) The preliminary declaration of disclosure shall not be filed  
12 with the court, except on court order; however, the parties shall file  
13 proof of service *or acknowledgement of receipt* of the preliminary  
14 declaration of disclosure with the court.

15 (c) The preliminary declaration of disclosure shall set forth  
16 with sufficient particularity, that a person of reasonable and  
17 ordinary intelligence can ascertain, all of the following:

18 (1) The identity of all assets in which the declarant has or may  
19 have an interest and all liabilities for which the declarant is or may  
20 be liable, regardless of the characterization of the asset or liability  
21 as community, quasi-community, or separate.

22 (2) The declarant's percentage of ownership in each asset and  
23 percentage of obligation for each liability where property is not  
24 solely owned by one or both of the parties. The preliminary  
25 declaration ~~may~~ *shall* also set forth the declarant's characterization  
26 of each asset or liability.

27 (d) A declarant may amend his or her preliminary declaration  
28 of disclosure without leave of the court. Proof of service of any  
29 amendment shall be filed with the court.

30 (e) Along with the preliminary declaration of disclosure, each  
31 party shall provide the other party with a completed income and  
32 expense declaration unless an income and expense declaration has  
33 already been provided and is current and valid.

34 SEC. 4. Section 2105 of the Family Code is amended to read:

35 2105. (a) Except by court order for good cause ~~or as provided~~  
36 ~~in subdivision (e)~~, before or at the time the parties enter into an  
37 agreement for the resolution of property or support issues other  
38 than pendente lite support, or, if the case goes to trial, no later than  
39 45 days before the first assigned trial date, each party, or the  
40 attorney for the party in this matter, shall serve on the other party

1 a final declaration of disclosure and a current income and expense  
2 declaration, executed under penalty of perjury on a form  
3 prescribed by the Judicial Council. The commission of perjury on  
4 the final declaration of disclosure *by a party* may be grounds for  
5 setting aside the judgment, or any part or parts thereof, pursuant  
6 to Chapter 10 (commencing with Section 2120), in addition to any  
7 and all other remedies, civil or criminal, that otherwise are  
8 available under law for the commission of perjury. ~~The party, and~~  
9 ~~his or her attorney, if any, shall be subject to monetary sanctions~~  
10 ~~for any fraud in the final declaration of disclosure, or any failure~~  
11 ~~to disclose assets or liabilities or business, investment, or potential~~  
12 ~~income-producing opportunities, that amounts to gross~~  
13 ~~negligence.~~

14 (b) The final declaration of disclosure shall include all of the  
15 following information:

16 (1) All material facts and information regarding the  
17 characterization of all assets and liabilities.

18 (2) All material facts and information regarding the valuation  
19 of all assets that are contended to be community property or in  
20 which it is contended the community has an interest.

21 (3) All material facts and information regarding the amounts of  
22 all obligations that are contended to be community obligations or  
23 for which it is contended the community has liability.

24 (4) All material facts and information regarding the earnings,  
25 accumulations, and expenses of each party that have been set forth  
26 in the income and expense declaration.

27 ~~(c) The parties may stipulate to a mutual waiver of the~~  
28 ~~requirements of subdivision (a) concerning the final declaration of~~  
29 ~~disclosure by execution of a waiver in a marital settlement~~  
30 ~~agreement or by stipulated judgment or a stipulation entered into~~  
31 ~~in open court. The waiver shall include all of the following~~  
32 ~~representations:~~

33 ~~(1) Both parties have fairly, fully, and accurately complied with~~  
34 ~~Section 2104 and the preliminary declarations of disclosure have~~  
35 ~~been completed and exchanged, and the parties have accurately~~  
36 ~~and completely disclosed in writing any investment, business, or~~  
37 ~~other potential income-producing opportunity resulting from any~~  
38 ~~investment, business activity, training or education of either~~  
39 ~~spouse from the date of marriage to the date of separation, but that~~

1 ~~presents itself after the date of service of the preliminary~~  
2 ~~declaration of disclosure.~~

3 ~~(2) Both parties have completed and exchanged a current~~  
4 ~~income and expense declaration.~~

5 ~~(3) The waiver is knowingly, intelligently, and voluntarily~~  
6 ~~entered into by each of the parties.~~

7 ~~(4) Each party understands that by signing the waiver, he or she~~  
8 ~~may be affecting his or her ability to have the judgment set aside~~  
9 ~~as provided by law.~~

10 ~~(d) Whether execution of a mutual waiver of the final~~  
11 ~~declaration of disclosure requirements pursuant to subdivision (c)~~  
12 ~~will affect the rights of either party to have the judgment set aside~~  
13 ~~or will affect the fiduciary obligations of each to the other shall be~~  
14 ~~decided by a court based on the law and the facts of each particular~~  
15 ~~case. The authority to execute a mutual waiver provided by this~~  
16 ~~section is not intended, in and of itself, to affect the law regarding~~  
17 ~~the fiduciary obligations owed by the parties, the parties' rights~~  
18 ~~with respect to setting aside a judgment, or any other rights or~~  
19 ~~responsibilities of the parties as provided by law.~~

20 ~~(e)~~

21 ~~(c) In making an order setting aside a judgment for failure to~~  
22 ~~comply with this section, the court may limit the set aside to those~~  
23 ~~portions of the judgment materially affected by the nondisclosure.~~

24 ~~(f)~~

25 ~~(d) As to any judgment entered prior to January 1, 1996, the~~  
26 ~~rights of any party to have any or all of the judgment set aside for~~  
27 ~~failure to serve and file final declarations of disclosure, and the~~  
28 ~~validity of any alleged waiver of the disclosure requirement, shall~~  
29 ~~be subject to this section.~~

30 *SEC. 5. Section 2107 of the Family Code is amended to read:*

31 2107. (a) If one party fails to serve on the other party a  
32 preliminary declaration of disclosure under Section 2104 or a final  
33 declaration of disclosure under Section 2105, or fails to provide  
34 the information required in the respective declarations with  
35 sufficient particularity, and if the other party has served the  
36 respective declaration of disclosure on the noncomplying party,  
37 the complying party may, within a reasonable time, request  
38 preparation of the appropriate declaration of disclosure or further  
39 particularity.



(b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do either or both of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, ~~order impose money sanctions against the noncomplying party to pay to the complying party any.~~ *Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.*

*SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*